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18340 QA

Room 423% HCC-10
Office of the Chief Counsel
Federal Highway Administration
400 Seventh Street, S.W.
Washington, DC 20590

FHWA-97-2213-7

Federal Highway Administration (FHWA) Docket No. MC-93-34

The California Highway Patrol (CHP) offers the following comments regarding the Advance Notice of Proposed Rulemaking under the above captioned docket.

Since sleeper berths are already being used in motorcoaches, the CHP recommends that existing sleeper berth regulations in Title 49, Code of Federal Regulations (49 CFR), Section 393.76, be amended to account for design differences between motorcoaches and trucks and to provide for uniformity in design, installation, and enforcement.

The following response addresses questions 1, 6, 7, and 8 in the published notice. Questions 2, 3, 4, 5, and 9 would be more effectively addressed by industry commenters.

Question 1: The current text in 49 CFR Section 393.76(b), Location, in subdivision (2) addresses sleeper berth locations as follows: "...A sleeper berth must be located. . .in the cab or immediately adjacent to the cab. . . " The CHP recommends amending this section to allow sleeper berths in the passenger or baggage compartment areas on motorcoaches.

Question 6: We believe that some form of occupant protection would be appropriate for sleeper berth compartments located within the baggage area on motorcoaches, since this location is generally below the passenger compartment just above the roadway surface, however, we have no data to support such a recommendation. One possibility would be to require padding, of specific size and thickness, on the interior sides of sleeper berth compartments vulnerable to direct impact in the event of an accident.

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Question 7: We do not recommend allowing sleeper berths to be located adjacent to any engine compartment (including auxiliary engine and air conditioning engine compartments). To lessen the chances of sleeper berth occupants being subjected to excessive engine noise, heat, or exhaust fumes, which may prevent a driver (co-driver) from obtaining adequate rest, we recommend amending 49 CFR Section 397.76(g) to address this issue.

Question 8: The CHP recommends amending 49 CFR Section 393.76(c) "Exit from the berth," as follows: ". . .there must be a direct and ready means of exit from a sleeper into the driver's seat or compartment or directly into the passenger aisle of a motorcoach, unobstructed by passenger seats. . ."

Should you need further information or have questions, please contact Captain Mike Flores, Commander, CHP Commercial and Technical Services Section at (916) 445- 1865.

Sincerely,

L. DENNO, Chief
Enforcement Services Division

FHWA docket room under FHWA Docket No. MC-92-33-182.

Both the American Bus Association and the United Bus Owners of America have also indicated to the FHWA that the suitability of existing sleeper berth regulations for motorcoaches is a concern of their members.

The FHWA has also received written requests from the motorcoach industry to revise the current sleeper berth regulations to account for design differences between motorcoaches and trucks, (Copies of these letters are included in FHWA Docket No. MC-93-34.)

In response to these concerns and as Part of the FHWA's efforts to eliminate unnecessarily design-restrictive regulations, a review of the rulemaking history of the current sleeper berth requirements was completed. The review indicated that sleeper berths on motorcoaches may not have been considered when the existing sleeper berth regulations were promulgated.

In a final rule published on May 15, 1952 (17 FR 4422), the Interstate Commerce Commission (ICC) revised most of the existing Federal Motor Carrier Safety Regulations (FMCSRs) and created a number of new regulations. One new regulation set forth detailed specifications for sleeper berths. The rule required that every sleeper berth installed in or on a truck or truck-tractor after December 31, 1952, be located within or immediately adjacent to the cab, or within the cargo space of a truck, and be provided with a direct and ready means of exit into the driver's compartment (17 FR 4443). These requirements are now codified at 49 CFR 393.76(b)(2) and 393.76(c)(1), respectively.

In addition, the regulations also required 'hat any sleeper 'berth which could not meet this standard, in essence those installed on trucks or truck-tractors before December 31, 1952, be provided with means of communication between the occupant of the berth and the driver. The berth also had to be designed, constructed, and maintained to provide the occupant, without the assistance of other persons, at least two means of ready exit from the motor vehicle. These requirements are now codified at 49 CFR 393.76(d) and 393.76(c)(2)(ii), respectively.

Because motorcoach operators rarely used sleeper berths forty years ago, the ICC drafted a rule for trucks and truck-tractors. Practices in the motorcoach industry have changed, however, and some operators would like to use sleeper berths to reduce driver fatigue and to help comply with driver's hours of service regulations. The 1952 regulations did not address sleeper berths on motorcoaches, nor have any subsequent rulemakings done so.

On July 3.1970, the FHWA published a final rule relating to seat belts and restraint of sleeper berth occupants (35 FR 10859). That rule differentiated between trucks and buses with regard to seats, seat belt assemblies, and seat belt assembly anchorage requirements, but not with regard to sleeper berth restraint requirements.

Another rule on sleeper berth specifications was published on April 26, 1974 (39 FR 14710). It amended § 393.76 by increasing the minimum interior dimensions required for sleeper berths. The rule omitted specific references to trucks and truck-tractors but made no substantive changes to adapt the regulation to the different design configurations of motorcoaches.

Available information indicates that many sleeper berths installed on motorcoaches today are located in the baggage area. This area is modified to allow the doors to be opened from inside the compartment, and by adding a mattress, air conditioning, heat, and a means of communication with the driver. In order to meet the current requirement of § 393.76(c)(1) for direct and ready means of exit from the sleeper berth into the driver's seat or compartment, an aperture that meets the exit dimensional requirements must be cut into the floor of the motorcoach. This reduces the seating capacity of the motorcoach. The FHWA would like to know about other motorcoach sleeper berth designs which may or may not meet the current requirements of 5393.76.

The FHWA is requesting public comment on the question of whether, and if so how, existing sleeper berth regulations should be amended to address design differences between motorcoaches and commercial trucks.

Questions

The FHWA would appreciate comments on the following questions. Commenters are also encouraged to discuss any other matters related to sleeper berths on motorcoaches which they believe the FHWA should address.

1. Should existing sleeper berth regulations be amended to account for design differences between motorcoaches and trucks? If so, what changes should be made and why?

2. What is the current extent of sleeper berth usage within the motorcoach industry?

3. How many motorcoaches have been manufactured with sleeper berths as part of their original equipment? How and where are these sleeper berths installed? How many comply with § 393.76? How many do not?

4. How many motorcoaches have been retrofitted with sleeper berths? How and where are these sleeper berths installed? How many comply with § 393.76? How many do not?

5. Do after-market changes, such as cutting holes in the floor or modifying the cargo compartment, affect the structural integrity of the motorcoach?

6. The FHWA notes that if a driver sleeper berth is located within the baggage area and occupied while the motorcoach is in operation, the occupant could be vulnerable to a side impact collision. Are special requirements needed to ensure the occupants' safety?

7. If a driver sleeper berth is located in the baggage area of a motorcoach, should its location be restricted (e.g., only the forward-most portion of the baggage area)? If the sleeper berth is used while the vehicle is in operation. would having the sleeper berth near the mar of the motorcoach subject persons occupying the berth to excessive heat, noise, or exhaust?

a. The current requirements of § 393.76 for a direct and ready means of exit from the sleeper berth into the driver's seat or compartment may be design-restrictive for motorcoaches. Should the exit requirements allow a ready means of exit into the passenger compartment of the motorcoach instead of the driver's seat or compartment?

9. Would separate motorcoach sleeper berth regulations enhance motorcoach safety or benefit the motorcoach industry? If yes. how?

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practical. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive *Order* 12866 *(Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this document does not contain a "significant regulatory action" under Executive Order'12666 or a "significant" regulation under the regulatory policies and procedures of

the DOT. Due to the preliminary nature of this document and lack of necessary information on costs, however, the FHWA is unable to evaluate the economic impact of potential changes to regulatory requirements concerning the use and design of driver sleeper berths in the motorcoach industry. Based on the information received in response to this notice, the FHWA intends to carefully consider the costs and benefits associated with possible amendments to the regulations. Comments, information, and data are solicited on the economic impact of the potential changes.

Regulatory ***Flexibility Act***

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the effects of the potential regulatory changes on small entities. Based on the information received in response to this notice, the FHWA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), to carefully consider the economic impacts of these potential changes on small entities. The FHWA solicits comments, information, and data on these impacts.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive ***Order 12372 (Intergovernmental Review)***

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

National Environmental Policy Act

This agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Freight transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102: 49 CFR 1.48.

Issued on January 5.1994.

Rodney E. Slater,

Federal Highway *Administrator.*

(FR Doc. 94-738 Filed l-11-94; 8:45 am]

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